

**FILED**

Jun 27 2022

CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY s/ shellyy DEPUTY

Charles Devon Garrett CDC # BJ9946

P.O. Box 921 C-5 131

Imperial, Ca 92251

Petitioner in Pro se

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

In re CHARLES DEVON GARRETT

Case no. 22-CV-864

On Habeas Corpus

Petitioner in Pro se,

Amended Petition

VS.

For Collateral

SHAWN MOORE

Relief

Respondent.

Pursuant to Rule 15

TO THE ABOVE ENTITLED COURT:

Petitioner respectfully request this honorable court to take judicial notice of Petitioner's Amended Petition that arrives to this honorable court. The amendments to the Petition pertain to assertions that Petitioner has raised in his original habeas corpus petition that is currently pending review in this honorable court under referenced case no. This specific segment can be found on page 7 lines 15-24 on the original Petition that was filed in this honorable court June 10, 2022. All other information on the original Petition remains the same.

## Argument

## VI.

THE FIFTH DISTRICT COURT OF APPEAL CONSTRUCTIVELY DENIED PETITIONER ASSISTANCE OF COUNSEL ON APPEAL WHICH PRODUCED AN ERRONEOUS ASSESSMENT OF PETITIONER'S UNDERLYING CASE IN LIGHT OF THE SEARCH WARRANT THAT WAS PLUCKED FROM THE TRANSCRIPTS, PETITIONER WAS DENIED PROCEDURAL DUE PROCESS OF LAW

Petitioner alerted the Fifth District Court of Appeal that, the search warrant was "sanitized from the appellate record which deprived appellate counsel an effective analysis of the facts of Petitioner's underlying case, and an adequate review from this honorable court" (see original petition procedural exhibit #9 page 6 lines 21-25). The Fifth District Court of Appeal reviewed Petitioner's underlying case, six months after rendering an opinion on appeal June 14, 2021, the second review of Petitioner's underlying case, contained the search warrant. The thrust of Petitioner's claim was in harmony with California Civil Procedure § 170.3, which ultimately proved the honorable judge Cardoza "did not have jurisdiction to preside over Petitioner's underlying case".

Petitioner has also cited the California Civil Procedure § 170.1 specified statutes, California Judicial conduct canons, California Administration Rules, and United States Supreme

1 Court Precedents, all in which is vested in the United  
2 States Constitution Fourteenth Amendment Equal Protection  
3 Clause that is embodied in Due Process California  
4 Constitution Article I, §§7, 15. The Fifth District Court of  
5 Appeals rejection of Petitioner's contentions was objectively  
6 unreasonable. Moreover, -the Fifth District Court of Appeal  
7 committed in even more serious error, when it failed to  
8 appoint new counsel after discovering the search warrant  
9 in Petitioner's Habeas Corpus petition, that was not apart  
10 of the appellate record, which displayed an "incomplete trial  
11 court record" in the first instance, following Petitioner's Guilty  
12 verdict in the Fresno County Superior Court.

13 Petitioner contends that, the totality of these  
14 circumstances left Petitioner completely without representa-  
15 tion throughout the course of his appellate proceeding,  
16 because state appointed appellate counsel, was reviewing an  
17 incomplete trial court record in the first instance, which  
18 collectively, rendered the Fifth District Court of Appeals  
19 opinion a "distorted conception of the facts" because  
20 Petitioner's transcripts were edited, this materially and  
21 prejudicially affected Petitioner, because it denied him  
22 procedural due process of law in violation of United States  
23 Constitution Equal Protection Clause of the Fourteenth  
24 Amendment.

25 The Fifth District Court of Appeals failure to appoint  
26 new counsel sua sponte, in light of the search warrant  
27 that was not apart of the appellate record, was abuse  
28 of process that affected the integrity of an Appellate court's



1 function of "achieving Justice". New Counsel was an appropriate  
2 remedy, in "reviewing the entire trial court record de novo  
3 with the search warrant attached", as if the first appellate  
4 review never existed. Following Fifth District Court of Appeal  
5 Summary denial that was issued April 6, 2022, Petitioner  
6 filed a Petition for Review in the California Supreme Court.

7 Petitioner renewed his Judicial Bias claim, and added  
8 an additional claim of Constructive denial of counsel.

9 Petitioner asserts that, since the California Supreme Court  
10 obtained jurisdiction of Petitioner's underlying case for the  
11 first time, he presumed that, "the California Supreme Court  
12 would either grant the Petition for Review, or provide  
13 Petitioner a mechanism that would allow him to  
14 establish the facts of his underlying claims on the  
15 record"; however, this was not the case. The California  
16 Supreme Court, just outright rejected Petitioner claims.  
17 Petitioner contends that, the California Supreme Court  
18 Summary denial was objectively unreasonable, and also  
19 an erroneous assessment of Petitioner's underlying case,  
20 in light of the evidence Petitioner presented in his Petition  
21 for Review (see exhibit A).

22 Petitioner has acted diligently in pursuing his  
23 Constitutional Rights, and ultimately denied Justice in  
24 the States' Courts as a result. Petitioner is currently deprived  
25 of his personal liberty while illegally restrained, in violation  
26 of the Fifth and Fourteenth Amendments of the United States  
27 Constitution TO WIT: "No person in any State, shall be  
28 deprived of life and liberty without due process of law".

Petitioner contends he was deprived of his life, and liberty without due process of law. In closing, Petitioner respectfully request this honorable court to take judicial notice of the amended Petition that arrives to this honorable court. This is necessary when Petitioner has made assertions that was unsupported by a full-briefing of the fundamental defect, that deprived Petitioner Procedural due process of law in the course of his appellate proceeding, following the jurors guilty verdict in the Fresno County Superior Court.

### POINTS, AND AUTHORITIES

Relying on *Penon v. Ohio*, 488 U.S. 75, 102 L.Ed 2d 300, 109 S.Ct. at p. 352-54 "it is important to emphasize that the denial of counsel in this case left Petitioner completely without representation during the appellate court's actual decisional process. Because the fundamental importance of the assistance of counsel does not cease as the prosecutorial process moves from the trial to the appellate stage, the presumption of prejudice must extend as well to the denial of counsel on appeal." quoting *Penon* [citation]

Under clearly established law, "all criminal defendants have right to an advocate in mandatory appeals" see

*Douglas v. California*, 372 U.S. 353, 83 S.Ct. 814 (1963); also see *Evitts v. Lucey*, 469 U.S. 392, 83 L.Ed 2d 821, 105 S.Ct. 830 (1985).

"If a state created appellate courts as an integral part of the...system for finally adjudicating the guilt or innocence of a defendant, the procedures used in deciding appeals must comport with the demands of the Due

Process and Equal Protection Clauses of the Constitution" quoting *Griffin v. Illinois* (1956), 351 U.S. at 18. Because the right to a "record of sufficient completeness" is a procedural due process right see *Bush v. Sec'y, Fla Dep't of Correction*, 888 F.3d at 1188-97. The Fifth District Court of Appeal was objectively unreasonable in rejecting Petitioner's claim of "Judge Cardoza sitting as a disqualified judge" and therefore lacked jurisdiction of Petitioner underlying case, the court's failure to vacate his conviction was an erroneous assessment of Petitioner's underlying case, in light of the search warrant that was presented in Petitioner's habeas corpus petition. This materially and prejudicially affected Petitioner *Keough v. Tate City Bd. of education*, 748 F.2d 1077, 1083 (5<sup>th</sup> Cir. 1984); *Mullen v. Blackburn*, 808 F.2d 1143, 1146 (5<sup>th</sup> Cir. 1987). Affirming a conviction on direct appeal notwithstanding the absence of portions of the trial transcript essential to meaningful appellate review of trial-judge error could deny the defendant procedural due process of law see e.g. *Mayer v. Chicago*, 404 U.S. at 193-96, 92 S.Ct. at 414-15; *Draper v. Washington*, 372 U.S. 487, 495-98, 83 S.Ct 774, 779-80, 9 L.Ed. 2d 899 (1963); *Griffin v. Illinois*, 351 U.S. 12, 15, 76 S.Ct. 585, 589, 100 L.Ed 891 (1956). Moreover, the search warrant should have been a normal part of the trial transcripts because it identifies the jurisdiction of Petitioner's underlying case and because the search warrant was omitted, this denied adequate appellate review following state appointed appellate counsel's *wende* brief. "When a state deprives a person of liberty or property through a hearing



held under statutes and circumstances which necessarily interfere with the course of justice, it deprives him of liberty and property without due process of law" see *Tumey v. Ohio*, 273 U.S. 510, 47 S.Ct. 437, 71 L.Ed. 749 (1927); *Moore v. Dempsey*, 261 U.S. 86; *Frank v. Mangum*, 237 U.S. 309. The California Supreme Court took an erroneous assessment of Petitioner's underlying case in light of the evidence Petitioner presented in his Petition for Review. The trial court judge "should not only be fair in fact, but it should also appear to be fair. And where the contrary appears, it shocks the judicial instinct to allow the judgment to stand" see *Pratt v. Pratt* (1903) 141 Cal. 247, 252, 74 p. 742. Although fairness "requires an absence of actual bias in the trial of cases", it is "endeavored to prevent even the probability of unfairness" *Greenway v. Schriro* (9<sup>th</sup> Cir. 2011) 655 F.3d 790, 806. The remedy of habeas corpus "permits an examination not only of the actual evidence introduced at a Petitioner's trial but of any necessary additional evidence bearing upon the infringement of the Petitioner's Constitutional rights" see *In re Bell* (1942) 19 C 2d 488, 501 [Citations omitted]. It is "regarded as the greatest remedy known to the law whereby one unlawfully restrained of his liberty can secure his release" *In re Clark* (1993) 5 C 4th 750, 764; see also *In re Sanders* (1999) 21 C 4th 697, 703. Petitioner asserts that, the search warrant was plucked from the trial record for the general purpose of "going undetected throughout the appellate process", this way, appellate counsel cannot see the fundamental defect, while reviewing Petitioner's

underlying case. It is Petitioner's belief that either Judge Cardoza, court clerk, or the court reporter manipulated Petitioner's transcripts, because the only search warrant that was apart of Petitioner's transcripts, was the search warrant that was executed to search Petitioner's "Jail cell". Petitioner contends that, whoever manipulated Petitioner's transcripts, acted willfully and with reckless disregard for Petitioner's fundamental Procedural Due Process of law with regard to Petitioner's mandatory appeal following the juror's guilty verdict. "To act willfully in the sense in which we use the word is to act in open defiance or reckless disregard of a constitutional requirement that has been made specific and definite" quoting *screws v. United States* 325 U.S. 91, 105, 65 S.Ct. 1031, 89 L.Ed. 1495 (1945). "Willfulness includes reckless disregard" see *United States v. Johnstone*, 107 F.3d 200, 208 (3d Cir.1997). A fair trial and appeal is a constitutional right see *Lisenba v. California*, 314 U.S. 219, 236, 62 S.Ct. 280, 86 L.Ed. 166 (1941). Petitioner contends, the state's entire case deprived him of fundamental Due Process of law that rendered his conviction and sentence unconstitutional because Petitioner was convicted without Due Process of law, in violation of the Fifth and Fourteenth Amendment to United States Constitution. The totality of these circumstances resulted in manifest error that tainted the framework of Petitioner's appeal. Because the search warrant was omitted from the transcripts, Petitioner's conviction is based on a distorted conception of the facts not adequate, "resulting the verdict worthy of confidence" that Justice was served. see *Kyle's v. Whitley* (1995) 514 U.S. 419, 434, 115 S.Ct. 1555; *Mathews*, 424 U.S. 319, 96 S.Ct. 893 (1976)



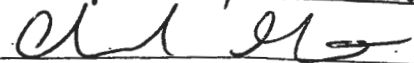
DECLARATION IN SUPPORT OF AMENDED PETITION

I, Charles Devon Garrett, Petitioner in Pro se, Declare:

Based on the foregoing, I respectfully request this honorable court to take judicial notice of the Amended Petition that arrives to this honorable court. The information provided in the Amended Petition, is based on Petitioner's recollection and understanding of the committed errors complained of.

Dated: 6-22-22

Respectfully Submitted,



Charles Devon Garrett

Petitioner in Pro se

**PROOF OF SERVICE BY MAIL**

**BY PERSON IN STATE CUSTODY**

(Fed. R. Civ. P. 5; 28 U.S.C. § 1746)

I, Charles Devon Garrett, declare:

I am over 18 years of age and a party to this action. I am a resident of El Centro  
Centinela state Prison,

in the county of Imperial,

State of California. My prison address is: P.O. Box 921 C-5 131,

On \_\_\_\_\_,  
(DATE)

I served the attached: Amended Petition, Petition for Review in California  
Supreme Court  
(DESCRIBE DOCUMENT)


on the parties herein by placing true and correct copies thereof, enclosed in a sealed envelope, with postage thereon fully paid, in the United States Mail in a deposit box so provided at the above-named correctional institution in which I am presently confined. The envelope was addressed as follows:

Charles Devon Garrett  
P.O. Box 921 C-5 131  
Imperial, Ca 92251

Clerk of U.S. District Court  
TO: 333 West Broadway suite 420  
San Diego, Ca 92101

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 6-22-22  
(DATE)

  
(DECLARANT'S SIGNATURE)

**PROOF OF SERVICE BY MAIL**

**BY PERSON IN STATE CUSTODY**

(Fed. R. Civ. P. 5; 28 U.S.C. § 1746)

I, Charles Devon Garrett, declare:

I am over 18 years of age and a party to this action. I am a resident of El Centro  
Centinela state Prison,  
in the county of Imperial  
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<u>Charles Devon Garrett</u>	<u>Office of Attorney General</u>
<u>P.O. Box 921 C-5 131</u>	<u>To: State of California</u>
<u>Imperial, Ca 92251</u>	<u>600 West Broadway suite 1800</u>
	<u>San Diego, Ca 92101</u>

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on 6-22-22  
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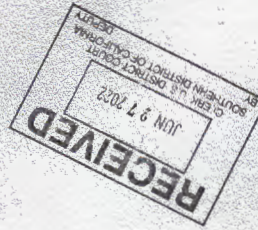
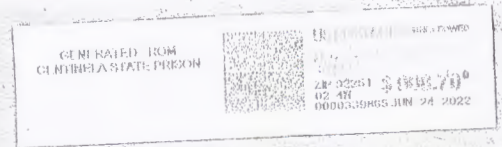
  
(DECLARANT'S SIGNATURE)



Charles Devon Garrett CDC# BJ9946

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Imperial, Ca 92251



Clerk of United States District Court  
333 West Broadway suite 420  
San Diego, Ca 92101

LEGAL MAIL

*A. Chavez*



*6/27/22*

CENTINELA STATE PRISON  
FACILITY C BUILDING 5